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September 9, 2022

**Via CM/ECF**

Honorable Judge Dora L. Irizarry  
United States District Court  
225 Cadman Plaza East  
Brooklyn, NY 11201

**Re: *McDonald's Corporation v. Vanderbilt Atlantic Holdings LLC*,  
Case No. 1:19-cv-06471-DLI-ST**

Dear Judge Irizarry:

This firm represents defendant Vanderbilt Atlantic Holdings LLC ("Defendant") in the above referenced action.

In accordance with Rules IV.F.1 and IV.F.2 of the Court's Individual Rules and this Court's July 6, 2022 Order, on Monday, September 12, 2022, we will deliver courtesy copies of the following motion papers, which were e-filed on the docket of this action on September 9, 2022 in connection with Defendant's motion for summary judgment [Dkt. No. 66]:

**Served on July 29, 2022**

- (1) Defendant's Notice of Motion for Summary Judgment;
- (2) Memorandum of Law in Support of Defendant's Motion for Summary Judgment;
- (3) Defendant's Statement Pursuant to FRCP 56 and Local Rule 56.1;
- (4) Declaration of Pinchus "Sam" Rottenberg with Exhibits;
- (5) Declaration of Thomas Tener with Exhibits;
- (6) Declaration of Howard Koh with Exhibits;

**Served on August 26, 2022**

- (7) Plaintiff's Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment;
- (8) Declaration of Sharon Locatell, MAI, CRE, MRICS;
- (9) Declaration of Brendan M. Walsh in Opposition to Summary Judgment with Exhibits;
- (10) Plaintiff's Response to Defendant's Rule 56.1(a) Statement and Statement of Additional Material Facts in Dispute Pursuant to Rule 56.1(b);

**Served on September 9, 2022**

- (11) Reply Memorandum of Law in Support of Defendant's Motion for Summary Judgment;
- (12) Reply Declaration of Pinchus "Sam" Rottenberg; and
- (13) Declaration of Stephen B. Meister.

An index of the above-listed papers is enclosed herewith.

Respectfully submitted,



Howard S. Koh

cc: All counsel of record (via CM/ECF)

Enclosure (Index)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
MCDONALD'S CORPORATION,

Plaintiff,

19 Civ. 06471 (DLI) (SLT)

v.

VANDERBILT ATLANTIC  
HOLDINGS LLC,

Defendant.

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**INDEX OF DOCUMENTS SUBMITTED TO THE COURT  
ON DEFENDANT VANDERBILT ATLANTIC HOLDINGS LLC'S  
MOTION FOR SUMMARY JUDGMENT**

Vanderbilt's Moving Papers on Summary Judgment [Dkt. Nos. 66, 67]

<b>Document Name</b>	<b>Description</b>
Notice of motion dated July 29, 2022	
Declaration of Pinchus "Sam" Rottenberg dated July 28, 2022	
Ex. A to Rottenberg Declaration	Option Rent Addendum
Ex. B to Rottenberg Declaration	Ground Lease March 18, 1998
Ex. C to Rottenberg Declaration	Letter agreement September 16, 2019
Ex. D to Rottenberg Declaration	Vanderbilt letter May 10, 2018
Ex. E to Rottenberg Declaration	McDonald's letter April 15, 2019
Ex. F to Rottenberg Declaration	Memorandum of lease
Ex. G to Rottenberg Declaration	Email chain
Ex. H to Rottenberg Declaration	M.M.B. Associates - Vanderbilt lease
Declaration of Thomas J. Tener dated July 26, 2022	
Ex. A to Tener Declaration	Email chain
Ex. B to Tener Declaration	KTR restricted appraisal April 15, 2019
Ex. C to Tener Declaration	Locatell appraisal June 17, 2019
Ex. D to Tener Declaration	KTR restricted appraisal July 30, 2019
Ex. E to Tener Declaration	Locatell appraisal Sept. 20, 2019
Ex. F to Tener Declaration	Email chain

Declaration of Howard S. Koh dated July 29, 2022	
Ex. A to Koh Declaration	Rottenberg deposition transcript
Ex. B to Koh Declaration	Meyer deposition transcript (filed under seal)
Ex. C to Koh Declaration	Li deposition transcript
Ex. D to Koh Declaration	DeMarco deposition transcript
Ex. E to Koh Declaration	Tener deposition transcript
Ex. F to Koh Declaration	Locatell deposition transcript
Ex. G to Koh Declaration	Missry deposition transcript
Ex. H to Koh Declaration	Hedden deposition transcript
Ex. I to Koh Declaration	Aaron deposition transcript
Statement Pursuant to FRCP 56 and Local Rule 56.1 dated July 29, 2022	
Memorandum of Law in Support of Defendant's Motion for Summary Judgment dated July 29, 2022	

McDonald's Papers in Opposition to Vanderbilt's Motion for Summary Judgment [Dkt. No. 68]

Document Name	Description
Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment	
Response to Defendant's Rule 56.1(a) Statement and Statement of Additional Material Facts in Dispute Pursuant to Rule 56.1(b)	
Declaration of Sharon Locatell, MAI, CRE, MRICS	
Declaration of Brendan M. Walsh in Opposition to Defendant's Motion for Summary Judgment	
Exhibit 1	McDonald's amended deposition notice to Vanderbilt, dated July 21, 2021.
Exhibit 2	Declaration of Pinchus "Sam" Rottenberg, dated April 28, 2022.
Exhibit 3	Email dated February 10, 2017 from Tony Musto to Sam Rottenberg.
Exhibit 4	Email correspondence from January 2018 between Vanderbilt and Slater & Beckerman PC, and an attached engagement letter for Slater & Beckerman to provide lobbying services to Vanderbilt.

Exhibit 5	Excerpts of an Environmental Assessment Statement dated February 25, 2021 prepared by an environmental consultant retained by Vanderbilt for its redevelopment proposal.
Exhibit 6	Email from Murray Schneier, counsel to Vanderbilt, to Michael Meyer of McDonald's dated February 16, 2018.
Exhibit 7	Email from Tom Li of Vanderbilt dated May 30, 2018 attaching a signed engagement for BBG, Inc. to perform an appraisal "of the [Property] based on comparable land sales and a residual analysis if necessary, in addition to an analysis of the projected ground rent for McDonald's."
Exhibit 8	Appraisal of the Property prepared by BBG, Inc. for Rottenberg, dated July 9, 2018, with a valuation date of June 26, 2018.
Exhibit 9	June 7, 2018 email from Tom Tener to Rottenberg.
Exhibit 10	Tener's June 27, 2018 engagement letter with Vanderbilt.
Exhibit 11	Tener's appraisal report for the Property dated August 30, 2018.
Exhibit 12	Draft appraisal report prepared for Vanderbilt by Republic Valuations, dated January 31, 2019.
Exhibit 13	Engagement letter between Vanderbilt and Metropolitan Valuation Services dated February 14, 2019.
Exhibit 14	February 26, 2019 email from David Lyon of Metropolitan Valuation Services to Rottenberg and Missry, and an accompanying attachment containing Metropolitan's review of one of Tener's appraisal reports.
Exhibit 15	Tener's March 8, 2019 engagement letter with Morris Missry, Esq., counsel for Vanderbilt, for Tener to serve as Vanderbilt's appraiser for the FMV process under the McDonald's Lease.
Exhibit 16	Email from Tener to Missry, with a copy to Rottenberg, dated April 1, 2019 at 9:46 a.m.
Exhibit 17	Email from Tener to Missry, and accompanying attachment, dated April 1, 2019 at 4:28 p.m.

Exhibit 18	Email from Katrina Rainey of McDonald's to Carol DeMarco and Yolanda Holmes of McDonald's dated January 17, 2018.
Exhibit 19	Email chain showing that Rottenberg sent a copy of the McDonald's Lease to Jay Levinton of Westerman Ball Ederer Miller Zucker & Sharfstein, LLP on February 26, 2017.
Exhibit 20	Email from Jonathan Imani of IMC Architecture to Rottenberg and Dushinsky, among others, dated March 13, 2018, with accompanying attachments.
Exhibit 21	Email from Christina Szczepanski of Philip Habib & Associates to Rottenberg, among others, attaching a draft Reasonable Worst Case Development Scenario Form to be submitted to the Department of City Planning.
Exhibit 22	Interdivisional Meeting Record from the New York City Department of City Planning dated December 13, 2018 concerning a meeting held on November 19, 2018.
Exhibit 23	Typewritten notes produced by Vanderbilt in this matter.
Exhibit 24	Email from Tener to Rottenberg and Missry dated July 9, 2019.
Exhibit 25	Email chain between Tener and Missry from June 18, 2019 through July 30, 2019, and an accompanying attachment.
Exhibit 26	Assignment and Assumption of Lease between M.M.B. Associates, LLC and Vanderbilt Atlantic Holdings LLC dated November 30, 2017.
Exhibit 27	Letter from Brendan M. Walsh, Esq. to Morris Missry, Esq. dated November 1, 2019.
Exhibit 28	Letter from Cassie O'Connor of McDonald's to Simon Dushinsky of Vanderbilt dated December 11, 2017 requesting a number of documents from Vanderbilt, including "A copy of the Ground Lease conveying the subject property to [Vanderbilt.]"
Exhibit 29	Email chain from December 2017 regarding McDonald's requests for a copy of the Vanderbilt Lease.

Exhibit 30	Highly redacted version of the Vanderbilt Lease that Vanderbilt sent to McDonald's in December 2017.
Exhibit 31	McDonald's July 8, 2021 notice of the deposition of Rottenberg.
Exhibit 32	Letter from Vanderbilt to McDonald's dated April 2, 2019.
Exhibit 33	Emails between McDonald's, Locatell, and Locatell's colleague—Ellen Benjamin—from December 2018 and April 2019 concerning the \$7 million valuation of the Vanderbilt Lease reported by Vanderbilt and M.M.B to the New York City of Department of Finance.
Exhibit 34	Excerpt of internal McDonald's emails from December 15, 2018 (non-confidential portions only) showing a request for a copy of the Vanderbilt Lease and a response from Carol DeMarco stating "We have a copy [of] the 99 yr lease but many paragraphs including rents are redacted."
Exhibit 35	Email from Carol DeMarco of McDonald's to Rottenberg dated February 8, 2018.
Exhibit 36	Carol DeMarco's handwritten notes from her May 24, 2018 call with Rottenberg.
Exhibit 37	Email from Sharon Locatell to DeMarco and Meyer dated May 9, 2019.
Exhibit 38	Email from Tener to Missry and Rottenberg dated May 9, 2019.
Exhibit 39	Email chain among Missry, Tener, and Rottenberg from May 6, 2019 through May 14, 2019.
Exhibit 40	Email chain among Missry, Meyer, Rottenberg, and DeMarco from May 20, 2019 through May 31, 2019.
Exhibit 41	Letter from Meyer to Missry dated July 23, 2019.
Exhibit 42	PowerPoint presentation used by Vanderbilt in its March 4, 2021 meeting before the Community Board 8 Land Use Committee.
Exhibit 43	Lobbying records filed with the Office of City Clerk, City of New York through June 8, 2022 for work performed on behalf of Vanderbilt through December 31, 2021.

Exhibit 44	Sharon Locatell's letter opinion of value dated September 20, 2019 provided to Tener on September 27, 2019.
Exhibit 45	Expert report of Amanda Aaron, MAI, CRE dated November 12, 2021.

Vanderbilt's Reply Papers on Summary Judgment [Dkt. No. 69]

Document Name	Description
Reply Memorandum of Law in Support of Defendant's Motion for Summary Judgment, dated September 9, 2022	
Declaration of Pinchus "Sam" Rottenberg dated September 6, 2022	
Declaration of Stephen B. Meister, dated September 8, 2022	